

Message Text

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ACTION L-03

INFO OCT-01 ARA-16 IO-14 ISO-00 CIAE-00 DODE-00 PM-07 H-03

INR-10 NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SP-03 SS-20

USIA-15 DRC-01 /106 W

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R 262116Z APR 74

FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC 8365

INFO USMISSION GENEVA

USMISSION USUN NEW YORK

C O N F I D E N T I A L SECTION 1 OF 2 SANTIAGO 2272

EO 11652: GDS

TAGS: CI, PFOR, SOCI, UN

SUBJECT: AIR FORCE TRIALS: SOME OBSERVATIONS

REF: STATE 80819

1. SUMMARY: EMBASSY IS OBSERVING WIDELY PUBLICIZED AIR FORCE MILITARY TRIALS WHICH OPENED IN SANTIAGO APRIL 17. TRIALS PROCEEDING IN WHAT IS UNQUESTIONABLY A POLITICAL SETTING: OFFENSES CHARGED AND SENTENCES REQUESTED HAVE MEANING ONLY IN CONTEXT OF A STRUGGLE FOR POLITICAL SURVIVAL. NEVERTHELESS, IN THESE PARTICULAR TRIALS, CHILEAN LEGAL FORMALITIES ARE BEING QUITE METICULOUSLY OBSERVED. WE DO NOT ASSUME THAT THIS WILL NECESSARILY BE CASE IN THE VARIOUS TYPES OF TRIALS STILL TO COME.

2. BASIC LEGITIMACY OF TRIALS IS A MORE DEBATABLE MATTER. ARGUMENT CAN BE MADE THAT SOME ACTS INVOLVED WERE LEGAL WHEN COMMITTED, AND THAT SINCE BULK OF THEM TOOK PLACE BEFORE "STATE OF WAR" PROCLAIMED SEPTEMBER 11, 1973, MOST TRIALS SHOULD BE CARRIED ON IN CIVIL COURTS AND NOT UNDER MILITARY JUSTICE. VERDICT OF OUTSIDE WORLD WILL BE INFLUENCED BY A NUMBER OF FACTORS: CONTINUING PROVISION OF LEGAL SAFEGUARDS TO DEFENDANTS; OPENNESS TOWARD FOREIGN OBSERVERS; HOW CHARGES

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OF TORTURE ARE MET; EXTENT TO WHICH JUNTA CAN LINK SENTENCES

TO NEED TO PREVENT SUBVERSION, TERRORISM AND VIOLENCE, AND ESTABLISHMENT OF A MARXIST DICTATORSHIP; AND MAGNANIMITY OF JUNTA IN APPLICATION OF SENTENCES. IN ANY EVENT, NEWS RE TRIALS WILL HAVE PROFOUND LOCAL EFFECTS AND MAY CONTRIBUTE TO GREATER FREEDOM OF EXPRESSION. END SUMMARY.

3. EMBOFFS ATTENDED AIR FORCE TRIALS APRIL 23 THROUGH 25 AND PLAN TO CONTINUE PERIODICALLY. OBSERVERS FROM BRITISH EMBASSY, PAPAL NUNCIATURA, TWO LAWYERS FROM "FAIR TRIAL COMMITTEE," STAFFDEL SCHNEIDER, ICRC REP, INTERNATIONAL COMMISSION OF JURISTS REPS, ROMAN BAR ASSOCIATION REP (SIC), AND NEWSMEN WERE ALSO PRESENT. EMBOFFS OBTAINED DOCUMENT AUTHORIZING ATTENDANCE AT TRIALS FROM AIR FORCE PUBLIC RELATIONS OFFICE, WHICH IS LIMITING ADMISSIONS TO PERSONS WITH DIRECT INTEREST AND COMPETENCE. TRIBUNAL IS, FIRST, PROCESSING CASES OF DEFENDANTS ACCUSED OF THE LESS SERIOUS OFFENSES (PARA 7, SANTIAGO 1936). AT PRESENT RATE OF TWO CASES A WORKDAY, WITH MORE SERIOUS OFFENDERS YET TO COME, TRIAL COULD LAST ANOTHER TWO MONTHS.

4. PRESIDENT OF COURT, BRIG GEN (AIR) JUAN SOLER MANFREDINI, AND JUDGES COLS FORNET, SANHUEZA, LOPETIGUI, TAPIA, BERG, AND COMMANDANTE GODOY ARE ACTIVE DUTY OFFICERS IN IMPORTANT POSITIONS IN THEIR SERVICE AND RESPECTED WITHIN CHILEAN AIR FORCE (FACH) AND BY EMBASSY MILITARY OBSERVERS. PROSECUTOR (FISCAL), BRIG GEN ORLANDO GUTIERREZ BRAVO, A NON-LAWYER KNOWN AS HARDLINE ANTI-MARXIST, IS NOT IMPRESSIVE IN HIS ROLE AS CIVILIAN DEFENSE LAWYERS RUN CIRCLES AROUND HIM.

5. THOSE WHOSE CASES HAVE BEEN HEARD SO FAR HAVE BEEN CHARGED MAINLY WITH PARTICIPATION IN VARIOUS TYPES OF POLITICAL ACTIVITIES AND RELATIVELY MINOR MILITARY INFRA-ACTIONS. HOWEVER, THEIR TESTIMONY IS BEING COMBINED IN COURT PROCEEDINGS WITH MATERIAL DRAWN FROM CONFESSIONS OF OTHER PRISONERS TO CREATE A PATTERN OF CONSPIRACY WHICH APPEARS TO UNDERLIE ENTIRE PROSECUTION CASE. GOVERNMENT IS CLEARLY SEEKING TO DEMONSTRATE THAT DEFENDANTS WERE COOPERATING WITH EXTREMIST LEADERS OF FORMER UNIDAD POPULAR (UP) TO CREATE "PARALLEL ARMED FORCES" TO TAKE OVER FACH INSTALLATIONS ON THE DAY WHEN, UNDER WHAT THE JUNTA CALLS PLAN ZETA, THE

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"PREVENTIVE COUP" OR SHIFT TO OPEN MARXIST DICTATORSHIP WAS TO HAVE TAKEN PLACE.

6. MANY OFFICERS AND ENLISTED MEN IN GROUP OF MINOR OFFENDERS WHOSE CASES ARE NOW BEING CONSIDERED (PARA 7 OF SANTIAGO 1936) ARE CHARGED WITH BEING MEMBERS OF SYMPATHIZERS OF MOVEMENT OF REVOLUTIONARY LEFT (MIR) CELLS AND WITH MEETING WITH MIR AND OTHER EXTREMIST LEADERS, CIVILIAN AND MILITARY, WHERE

PLANS FOR TAKING OVER EACH INSTALLATIONS WERE DISCUSSED. OTHER CHARGES ARE LESS SERIOUS. ONE GROUP OF FOUR YOUNG SECOND LIEUTENANTS ADMIT THEY FORMED "POLITICAL DISCUSSION GROUP" TO STUDY SOCIALISM, AT MOST AN INFRACTION (FALTA) OF DISCIPLINE, BUT DENY MEMBERSHIP IN ANY ORGANIZED POLITICAL BODY OR ANY OPERATIONAL ACTIVITY ON BEHALF ANY SUCH GROUP, WHICH WOULD CONSTITUTE CRIME (DELITO). DEFENSE LAWYERS ARE MAINTAINING THAT NO PROVEN CRIMINAL ACTIVITY PROVED IN ANY INSTANCE AND THAT CASES SHOULD BE JUDGED UNDER DISCIPLINARY REGULATIONS IF AT ALL. DEFENDANTS HAVE ALREADY BEEN SEPARATED FROM EACH ADMINISTRATIVELY, WHICH WOULD BE LIKELY PENALTY IF CONVICTED UNDER CONCEPT OF SIMPLE PARTICIPATION IN POLITICAL "DISCUSSIONS."

7. CHARACTER WITNESSES INCLUDING FORMER COMMANDERS OF ACCUSED HAVE APPEARED IN THEIR FAVOR, AND SOME ADMITTEDLY FOUGHT AGAINST EXTREMISTS ONCE MILITARY COUP UNDER WAY. ONE DEFENDANT, CHARGED WITH PARTICIPATION IN A "DISCUSSION GROUP," CLAIMED HE HAD BROKEN ALL SUCH TIES BY MARCH 1972.

8. TESTIMONY AND CONFESSIONS OF OTHER PRISONERS LINK THESE LESSER FIGURES WITH MORE SENIOR OFFICERS WHO ALLEGEDLY HEADED CELLS. LATTERS' CASES WILL BE REACHED AS TRIAL GOES ON, AND MORE SENSATIONAL CHARGES, ONLY TOUCHED ON SO FAR, OF ACTUAL PARTICIPATION IN "CRIMINAL" ACTIVITY CAN BE EXPECTED.

9. VERDICTS AND SENTENCES FOR ALL WILL BE ANNOUNCED SIMULTANEOUSLY AFTER ALL CASES PROCESSED.

10. JUNTA HAS OBVIOUSLY DECIDED TO MAKE AIR FORCE TRIALS A SHOW-PIECE, METICULOUSLY OBSERVING FULL CHILEAN LEGAL PROCEDURES AND SAFEGUARDS. (IT SHOULD BE RECALLED THAT THESE CONFIDENTIAL

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STEM FROM CIVIL RATHER THAN COMMON LAW PRACTICES AND THUS GIVE LESS OBVIOUS PROTECTION TO THE DEFENDANT.) OUR IMPRESSION IS THAT THE PROCEEDINGS THEMSELVES CAN PASS TEST OF EVEN A CRITICAL OBSERVER IN THIS REGARD, AND INDEED SEVERAL OBSERVERS (FAIR TRIAL COMMITTEE, RED CROSS) HAVE EXPRESSED THEIR SURPRISE AND SATISFACTION. WHETHER MAJOR SUBSTANTIVE PREMISES ON WHICH TRIALS ARE BASED CAN PASS SUCH A TEST IS DEBATABLE.

11. USEFUL TO DISTINGUISH THREE GENERAL CATEGORIES OF TRIALS:

A) FIRST, TRIALS CONDUCTED BY PROVINCIAL MILITARY TRIBUNALS (CONSEJOS DE GUERRA) WHICH BEGAN MEETING AND METING OUT SENTENCES AS EARLY AS LATE SEPTEMBER 1973 (CF SANTIAGO 4649,

SEPTEMBER 27, 1973). PERSONS CHARGED WERE ALMOST ALWAYS LOCAL LEVEL UP LEADERS, FEW OF WHOM WERE KNOWN ON NATIONAL SCENE. IN NEARLY ALL CASES, PROCEEDINGS WERE NOT PUBLIC, AND THERE IS REASON TO BELIEVE THAT PROCEDURAL SAFEGUARDS WERE NOT THE BEST (SEE SANTIAGO 1599 FOR REPORT OF ONE SUCH TRIAL IN TEMUCO). THESE TRIALS CONTINUE.

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USIA-15 DRC-01 /106 W

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B) SECOND IS TRIALS OF PERSONNEL, MAINLY MILITARY, CHARGED WITH OFFENSES IN OR DIRECTLY INVOLVING THE ARMED FORCES, OF WHICH PRESENT AIR FORCE PACKAGE IS FIRST. WE HEAR SIMILAR ARMY TRIALS WILL COME NEXT, ALTHOUGH WE HAVE SEEN NO INDICTMENTS OR OTHER DOCUMENTATION NOR DO DEFENSE LAWYERS HAVE ANY REAL INDICATION WHEN TRIALS WILL START OR HOW MANY PERSONS WILL BE CHARGED. LATER, REPORTEDLY, WILL COME TRIALS BY NAVY, THEN CARABINEROS.

C) THIRD CATEGORY IS LONG-RUMORED TRIALS OF PROMINENT PERSONALITIES HELD ON DAWSON ISLAND, WHO ARE BEING MOVED UP TO MILITARY FACILITY NEAR VALPARAISO, ACCORDING TO SOME REPORTS. THERE IS STILL NO DEFINITE INDICATION WHEN THESE TRIALS WILL TAKE PLACE, ALTHOUGH JUNTA SPOKESMAN WILLOUGHBY DID PUBLICLY STATE APRIL 17 THAT TRIALS WOULD START "SOON," AND GEN LEIGH CREATED IMPRESSION (SEPTEL) THEY MIGHT ACTUALLY BEGIN NEXT WEEK. WE DO NOT KNOW WHETHER THESE TRIALS WILL BE CONDUCTED BY MILITARY TRIBUNALS (AS OPPOSED TO CIVIL COURTS), ALTHOUGH

THAT IS THE PRESUMPTION. WE EXPECT THEM TO BE PUBLIC.

12. AIR FORCE TRIAL RAISES SEVERAL IMPORTANT SUBSTANTIVE LEGAL ISSUES. WE HAVE REPORTED (SANTIAGO 2172) COURT'S RULING ON RELATIVELY NARROW, TECHNICAL GROUNDS THAT WARTIME RULES ARE APPROPRIATE SINCE LEGAL PROCESS (PROCESO) WAS
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INITIATED AFTER STATE OF WAR WAS PROCLAIMED, EVEN THOUGH ALLEGED CRIMES WERE COMMITTED PRIOR TO THAT DATE. NUMEROUS LAWYERS AND OBSERVERS ARE CRITICAL OF THIS RULING AS SUB-JECTING THE ACCUSED TO EX POST FACTO JEOPARDY. ONE RESULT IS THAT ACTIONS WHICH, WHEN COMMITTED, WERE EITHER LEGAL OR MINOR DISCIPLINARY VIOLATIONS ARE NOW BEING JUDGED AS SERIOUS CRIMES. ANOTHER IS THAT APPEAL FROM MILITARY TRIBUNAL RULING CAN BE TAKEN TO CIVILIAN COURT IN PEACETIME, WHEREAS ONLY APPEAL IN WARTIME (I.E. AT PRESENT) IS TO MILITARY ZONE COMMANDER.

13. SHOULD BE NOTED THAT NO ONE IN CHILE HAS QUESTIONED RIGHT OF MILITARY TRIBUNALS TO TRY CIVILIANS (E.G. LAZO, SCHNAKE) CHARGED WITH INVOLVEMENT IN THEFT OF MILITARY DOCUMENTS AND FOMENTING INSUBORDINATION IN MILITARY RANKS. DEBATE HAS CENTERED EXCLUSIVELY ON WHETHER THESE TRIBUNALS WILL OPERATE UNDER PEACE-TIME OR WAR-TIME RULES. IT IS BROADLY ACCEPTED THAT UNDER STATE OF WAR PROVISIONS OF CHILEAN CONSTITUTION AND LONG-STANDING LEGISLATION, MILITARY COURTS CAN TRY CIVILIANS WHO HAVE ALLEGEDLY COMMITTED CERTAIN CRIMES, WHETHER IN PEACETIME OR WARTIME. DEFENSE GOES TO MERITS OF CASE RATHER THAN TO APPROPRIATENESS OF TRIBUNAL.

14. VIEWED FROM ANOTHER ANGLE, AN ESSENTIAL QUESTION IN THE TRIALS IS WHEN AN "ENEMY" AS DEFINED IN CHILEAN CODE OF MILITARY JUSTICE CAME INTO EXISTENCE. CENTRAL TO PROSECUTION CASE IN AIR FORCE TRIAL IS CONTENTION THAT THE "ENEMY" EXISTED LONG PRIOR TO SEPTEMBER 11, 1973. FOR EXAMPLE, RATHER THAN CHARGING DEFENDANTS WITH ARTICLE IN CODE ADDRESSED TO UNAUTHORIZED USE OF CLASSIFIED DOCUMENTS BEFORE THAT DATE, PROSECUTION HAS CHRGED SEVERAL OF THEM WITH PASSING SUCH DOCUMENTS TO THE "ENEMY" PRIOR TO SEPTEMBER 11. "ENEMY" IMPLIES AT MINIMUM A STATE OF DE FACTO WAR. INDICTMENT IDENTIFIES "ENEMY" AS COMMUNIST, SOCIALIST, MIR AND MAPU PARTIES.

15. WE ANTICIPATE THAT DEFENSE LAWYERS WILL AT SOME POINT IN AIR FORCE TRIALS RAISE QUESTION OF CONFESSIONS ALLEGEDLY EXTRACTED UNDER DURESS, I.E. TORTURE. WE UNDERSTAND THAT ISSUE ON THIS SUBJECT WILL NOT BE JOINED UNTIL A CASE WHICH MOST CLEARLY SUPPORTS DEFENSE CONTENTION COMES BEFORE THE TRIBUNAL, AND THAT MAY BE TWO OR THREE WEEKS AWAY. IF FACTS
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CAN BE CONVINCINGLY PRESENTED, HARD TO SEE HOW COURT COULD
DUCK ISSUE. ITS RULING COULD DO MUCH TO DETERMINE WORLD VIEW
RE LEGITIMACY AND FAIRNESS OF THESE TRIALS.

16. FINALLY, THERE IS QUESTION WHETHER TRIALS ARE INFLUENCED
BY POLITICAL CONSIDERATIONS. NO DOUBT IN OUR MINDS AS TO
ANSWER. PROSECUTOR'S OPENING STATEMENT WAS LONG DESCRIPTION,
IN THIS REGIME'S TERMINOLOGY, OF INIQUITIES OF ALLENDE
GOVERNMENT. CHARGES ACQUIRE FULL MEANING ONLY IN TERMS OF AID
TO THAT GOVERNMENT -- THE "ENEMY" -- AND ITS SUCCESSORS,
THOSE CLANDESTINE, SUBVERSIVE ELEMENTS, NOW UNDERGROUND AND
BEING AIDED BY MARXISTS FROM ABROAD, WHOSE AIM IT IS TO
OVERTHROW JUNTA AND ESTABLISH A MARXIST DICTATORSHIP.

17. IN THIS SENSE THE COMMON FAULT OF THE DEFENDANTS IS THAT
THEY FAILED TO RECOGNIZE SOON ENOUGH, IF AT ALL, THAT THE UP
THOUGH LEGITIMATELY INSTALLED, AT S
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MILITARY PERSONNEL, JUNTA, AIR FORCE, COURTS MARTIAL, POLITICAL CRIMES, POLITICAL TRIALS, POLITICAL SITUATION
Control Number: n/a
Copy: SINGLE
Draft Date: 26 APR 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GarlanWA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974SANTIA02272
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740100-0141
From: SANTIAGO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740410/aaaaaitl.tel
Line Count: 294
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: STATE 80819
Review Action: RELEASED, APPROVED
Review Authority: GarlanWA
Review Comment: n/a
Review Content Flags: ANOMALY
Review Date: 17 JUN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <17 JUN 2002 by rowelle0>; APPROVED <28 MAR 2003 by GarlanWA>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: AIR FORCE TRIALS: SOME OBSERVATIONS
TAGS: PFOR, SOCI, PINS, CI, UN, ICRC, INTERNATIONAL COMMISSION OF JURISTS, ROMAN BAR ASSOCIATON
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005